

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Giamoni	:	
	:	
v.	:	C-2019-3007637
	:	
Metropolitan Edison Company	:	

INTERIM ORDER CLOSING EVIDENTIARY RECORD

Anthony Giamoni (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on January 31, 2019, questioning a security deposit¹ assessed on his account and objecting to the installation of a smart meter at his residence at 1647 Alpine Drive, Pen Argyl, Pennsylvania 18072 (service location), due to health concerns. As relief, Complainant requested he be permitted to opt-out of the smart meter installation.

On February 25, 2019, Respondent filed an Answer and New Matter to the Formal Complaint. Respondent admitted that it provides residential retail electric service to Complainant at the service location. Respondent also admitted it assessed a security deposit in the amount of \$270 on Complainant's account. Respondent stated that Complainant refused to allow the Company access to the Company's meter in order to install a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent averred it is required by Act 129 of 2008 (Act 129) to install a smart meter. Additionally, Respondent stated that neither its tariff, Act 129 or its SMP permits the Company to forbear from the smart meter installation requirement or enable the Commission or Company to permit the opt-out of smart meter installation or delay installation in contradiction to the SMP. Respondent essentially denied the remaining material averments set forth in the Formal Complaint. Respondent requested that a prehearing conference be scheduled in this proceeding.

¹ Complainant averred that he always pays his bills, that he may be late a few times, but always pays and Respondent puts an extra amount on his bill that he cannot pay, like a security deposit.

On February 25, 2019, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request to opt-out of smart meter installation is not legally recoverable and Complainant failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the installation of the smart meter at the service location. Respondent further averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Respondent argued a hearing is not in the public interest and the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

On April 1, 2019, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to the undersigned.

On April 3, 2019, Complainant and his spouse, Kelly K. Giamoni, filed a response to Respondent's Answer and New Matter. The response did not address the averment regarding the security deposit and solely addressed Complainant's objection to the installation of a smart meter.

On April 30, 2019, an Interim Order was entered denying Respondent's Preliminary Objections.

On August 28, 2019, Respondent filed a Motion to Dismiss Complaint of Anthony Giamoni for Failure to Comply with Orders (Motion to Dismiss), averring Complainant failed to comply with the Interim Order dated July 23, 2019, requiring Complainant to provide responses to Respondent's discovery requests by August 16, 2019. Respondent averred Complainant, at no point, contacted Respondent to discuss the Discovery Requests or to seek an extension of time to respond to the Discovery Requests. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's failure to respond to the Discovery Requests demonstrates Complainant's lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations.

On October 25, 2019, an Interim Order was entered requiring the Parties to file a status report, including potential dates for an evidentiary hearing on or before December 6, 2019. Respondent filed a status report dated December 6, 2019. Complainant did not file a status report.

On November 20, 2019, Respondent filed an Amended Motion to Dismiss averring, Complainant repeatedly failed to comply with numerous Interim Orders, to respond to Discovery Requests and to exchange witness information. The Amended Motion to Dismiss included a Notice to Plead. No responsive pleading was filed by Complainant.

In its Motion to Dismiss and Amended Motion to Dismiss, Respondent argued that the Complaint should be dismissed due to Complainant's failure to provide witness information and respond to Discovery Requests, in violation of Interim Orders dated July 23, 2019 and October 11, 2019, respectively. Respondent argued Complainant's actions demonstrated a consistent lack of cooperation and willingness to prosecute his Complaint as required under the Commission's regulations.

As directed by the October 11, 2019 Interim Order, Complainant's objections, if any, to the Discovery Requests and his full and complete responses were due by October 30, 2019.

In its Motion to Dismiss and Amended Motion to Dismiss, Respondent averred it did not receive Complainant's witness information or discovery responses in violation of the July 23, 2019 Interim Order and the October 11, 2019 Interim Order, respectively.

Complainant did not file a certificate of service showing his service of full and complete responses to the Discovery Requests or his witness information upon Respondent, in violation of the Interim Orders entered July 23, 2019 and October 11, 2019. Further, Complainant did not file a status report in violation of the Interim Order entered October 25, 2019.

On March 16, 2020, the Public Utility Commission Office of the undersigned presiding officer was closed as a result of the COVID-19 pandemic. The office remained closed at the time of the scheduled hearing in this proceeding, however, hearings were conducted telephonically.

On March 20, 2020, the Commission issued the Emergency Order at Docket No. M-2020-3019262 concerning the Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements (Emergency Order). The Emergency Order ordered all Commission offices across the state to be closed, and notified the public that the Commission was unable to send or receive mail or documents from or to any of its principal places of business. Accordingly, the Commission waived the requirement for paper filings and ordered it would only accept e-filings of all documents, pursuant to 52 Pa. Code § 1.4, in order to continue operations during the pandemic emergency. Further, the Commission ordered that service of all documents by the Commission on parties would be by electronic means only and service by the parties on Commission staff, as a party or as presiding officers, would be by electronic means only.

On April 30, 2020, an Interim Order was entered granting the Amended Motion of Metropolitan Edison Company to Dismiss the Complaint, as it relates to all smart meter claims identified by Complainant. The Amended Motion of Metropolitan Edison Company to Dismiss the Complaint, solely limited to the claim regarding the assessment of a security deposit on Complainant's bill, was denied.

On August 5, 2020, a Initial Call-In Telephone Hearing Notice (Hearing Notice) was issued scheduling the evidentiary hearing for October 7, 2020. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further advised the Parties that they could lose their case if they did not take part in the hearing and present evidence on the issue(s) raised and that the case could be dismissed with prejudice.

The hearing convened as scheduled. Complainant did not appear. Attorney Tori Giesler and Attorney Lauren Lepkoskie appeared along with their witness on behalf of Respondent and made a motion to dismiss the Complaint. No request for a continuance was made by any party and no explanation was provided by Complainant regarding his failure to attend the hearing.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz, et al. v. Pa. Public Utility Commission*,² (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. § 2807(f). Specifically, the Commonwealth Court, in *Povacz I*, held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers accommodations based on their health concerns.³ However, the Commonwealth Court affirmed: (1) the Commission's application of the preponderance of evidence standard; (2) the Commission's finding that the customers in Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall failed to sustain their burden of proof; and (3) that the Commission's findings of fact were supported by substantial evidence.⁴ The Commonwealth Court also declined to find that the deployment of smart meters violated the customers' Fourteenth Amendment liberty interests in bodily integrity.⁵

The record closed on October 19, 2020, upon receipt of the hearing transcript.

In light of the Commonwealth Court's decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa. C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020, Stay Order*). *The November 4, 2020,*

² *Povacz, et al. v. Pa. Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020).

³ *Id.* at 490.

⁴ *Id.* at 490, 491, 493-495.

⁵ *Id.* at 487- 488.

Stay Order also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. The *November 4, 2020, Stay Order* applied to and was docketed at the instant case.

The Commission, as well as all other parties in *Povacz I* subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania. The November 4, 2020 Order stayed this Complaint proceeding.

On July 15, 2021, the Commission issued the Order at Docket No. M-2020-3019262 which revised its March 2020 Order to reflect the emergency provisions for service and filing of documents would expire on September 30, 2021. The Commission noted the Pennsylvania Legislature passed a Concurrent Resolution (HR106) on June 10, 2021, which terminated the Governor’s earlier Proclamation about the COVID19 pandemic on March 6, 2020. The Commission also noted a related action by then-Governor Wolf on June 11, 2021, which provided that the “temporary regulatory flexibility authority” to “Commonwealth agencies” (which during the earlier stages of the pandemic had issued an Order suspending a regulatory statute prescribing the procedures for conduct of Commonwealth business, or an Order, rule or regulation of a Commonwealth agency) would have those orders extended until September 30, 2021.

On August 16, 2022, the Pennsylvania Supreme Court issued a consolidated opinion⁶ (*Povacz II*) concluding that Act 129⁷ mandated smart meter deployment and required EDCs to install smart meter technology system-wide.

On November 9, 2023, the Commission entered the Order at Docket No. M-2009-2092655 (November 9, 2023 Order) lifting the stay that the Commission implemented by the November 4, 2020 Order. The November 9, 2023 Order lifted the stay on this Complaint

⁶ *Povacz, et al. v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

⁷ 66 Pa. C.S. § 2807(f).

proceeding, and directed the parties to proceeding to a resolution pursuant to the Commission's regulations governing formal proceedings at 52 Pa. Code §§ 5.1 – 5.631. The Commission explained that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

On November 13, 2024, an Interim Order was entered reopening the record. The Interim Order further provided that Complainant shall file any appropriate requests for relief, if any, on or before December 13, 2024 and permitted Respondent to file any responsive pleading or reply to any timely request for relief filed by Complainant, on or before January 17, 2025. No request for relief was filed by Complainant.

Under the circumstances the following Order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the record at Docket No. C-2019-3007637 is closed.
2. That an Initial Decision shall be prepared in this proceeding.

Date: March 3, 2025

/s/
Jeffrey A. Watson
Administrative Law Judge

C-2019-3007637 - ANTHONY GIAMONI v. METROPOLITAN EDISON COMPANY

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